

See Dissenting Opinion

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RUPERTO CORTEZ GONZALEZ,

Defendant and Appellant.

E074482

(Super.Ct.No. RIF146726)

OPINION

APPEAL from the Superior Court of Riverside County. John D. Molloy, Judge.

Affirmed.

Patricia L. Brisbois, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant, Ruperto Cortez Gonzalez, filed a petition for resentencing pursuant to Penal Code section 1170.95, which the court dismissed. After defendant filed a notice of appeal, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the facts and a statement of the case. We affirm.

I. PROCEDURAL BACKGROUND

On October 27, 2009, a jury found defendant guilty of attempted murder (Pen. Code, §§ 664, 187, subd. (a), count 1) and assault with a firearm (Pen. Code, § 245, subd. (a)(2), count 3). The jury also found true an allegation attached to the count 1 offense that defendant personally discharged a firearm proximately causing great bodily injury. (Pen. Code, §§ 12022.53, subd. (d).) As to the count 3 offense, the jury found true an allegation that defendant personally used a firearm (Pen. Code, § 12022.5, subd. (a)) and personally inflicted great bodily injury upon the victim (Pen. Code, § 12022.7, subd. (a)).

The court sentenced defendant to a indeterminate term of imprisonment of life with the possibility of parole, plus a consecutive term of 25 years to life. The court additionally imposed a security fine of \$60 (Pen. Code, § 1465.8, subd. (a)(1)); a victim restitution fine of \$5,000 (Pen. Code, § 1202.4, subd. (b)); a parole revocation restitution fine of \$5,000 (Pen. Code, § 1202.45, subd. (b)) suspended unless parole is revoked; and a criminal conviction assessment of \$60 (Gov. Code, § 70373).

On June 10, 2019, defendant filed a petition for resentencing pursuant to Penal Code section 1170.95 and a motion to vacate the court ordered fines and fees pursuant to *People v Dueñas* (2019) 30 Cal.App.5th 1157. The People filed a response in which they contended, in pertinent part, that defendant was not entitled to section 1170.95 relief because he was convicted only of attempted murder. Defense counsel filed a reply in which she maintained defendant was entitled to the relief requested regardless of suffering only a conviction of attempted murder.

At a hearing on the petition, the People asked the court to dismiss the petition because defendant had only been convicted of attempted murder. The court dismissed the petition on that basis.¹

II. DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, which he has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

III. DISPOSITION

The order denying defendant's petition for resentencing pursuant to Penal Code section 1170.95 is affirmed.

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McKINSTER

J.

I concur:

¹ Defense counsel never requested and the court never issued a ruling on the motion to vacate the fines and fees of which defendant complained.

RAMIREZ

P. J.

[*P. v. Gonzalez*, E074482]

MENETREZ, J., Dissenting.

The appellate review procedures under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*), in which we review the record ourselves to determine whether there are any arguable issues, apply “only to a defendant’s first appeal as of right.” (*People v. Thurman* (2007) 157 Cal.App.4th 36, 45; *People v. Serrano* (2012) 211 Cal.App.4th 496, 498 (*Serrano*).) *Wende/Anders* review is highly unusual and rooted in the constitutional right to counsel, and courts have repeatedly declined to apply it in other contexts. (*Pennsylvania v. Finley* (1987) 481 U.S. 551, 554-555; *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 535; *In re Sade C.* (1996) 13 Cal.4th 952, 959; *People v. Kisling* (2015) 239 Cal.App.4th 288, 290; *People v. Dobson* (2008) 161 Cal.App.4th 1422, 1425; *People v. Taylor* (2008) 160 Cal.App.4th 304, 307-308; *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570; 579.) Because this appeal concerns a postjudgment proceeding in which there is no constitutional right to counsel, appellant has no right to *Wende/Anders* review. Because appellant’s counsel filed an opening brief raising no issues, and appellant was notified but did not file a supplemental brief, we should not affirm but rather should dismiss the appeal as abandoned. (*Serrano*, 211 Cal.App.4th at pp. 503-504.) I therefore respectfully dissent.

MENETREZ

J.